IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CANDIDA STOKES,)
)
Plaintiff,)
)
v.)
) **Civil Action No.** 2:07CV 686-WHA
THE CITY OF MONTGOMERY,)
ARTHUR BAYLOR, Chief of Police,)
BOBBY BRIGHT, Mayor, in)
their individual)
and official capacities,) **DEMAND FOR JURY TRIAL**
)
Defendant.)

COMPLAINT

I. INTRODUCTION

This is an action alleging disability discrimination in violation of Titles I and II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12111 *et seq.*, 42 U.S.C. 1983, § 504 of the Rehabilitation Act, 29 U.S.C. § 794 and sexual discrimination in violation of Title VII of the Act of Congress known as the "Civil Rights Act of 1964," 42 U.S.C. Section 2000e *et seq.* as amended, and the Civil Rights Act of 1991, 42 U.S.C. § 1981, §1981a. Plaintiff also alleges a violation of the Family Medical Leave Act ("FMLA") 29 U.S.C.§ 2611, *et. seq*. Finally, plaintiff alleges retaliation under the aforementioned statutes. Plaintiff is entitled to both equitable relief as well as compensatory and punitive damages, and attorneys fees and costs.

II. JURISDICTION

1. This Court has jurisdiction in accordance with 28 U.S.C. § 1331, 1343, 2201, 2202, 42 U.S.C. § 12117, and 42 U.S.C. § 12133. Venue is proper pursuant to 28 U.S.C. § 1391.

2. Plaintiff has fulfilled all conditions precedent to the institution of this action under 42 U.S.C. § 12117. Plaintiff timely filed her charge of discrimination within 180 days of the occurrence of the last discriminatory act. Plaintiff also timely filed her Complaint within ninety (90) days of the receipt of a Notice of Right to Sue issued by the EEOC. Title II of the ADA, § 504 and the FMLA do not require the exhaustion of administrative remedies.

III. PARTIES

3. Plaintiff, Candida Stokes, is a white, female citizen of the United States and a resident of the State of Alabama. Plaintiff is a person with a disability as that term is defined under the ADA. Plaintiff also has a serious health condition under the FMLA and she is an employee eligible for benefits under that statute.

4. Defendant, the City of Montgomery (hereinafter "Montgomery") employees the City's police officers and is an employer and public entity in accordance with 42 U.S.C. § 12111(5), 42 U.S.C. § 12131(1), Title VII of the Act of

Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e *et seq.* and under the FMLA. 29 U.S.C. § 2611. Defendant is a recipient of federal financial assistance under § 504.

5. Defendant Arthur Baylor was, for all times relevant, the Chief of Police. Bobby Bright was, for all times relevant, the Mayor of Montgomery. Defendants Bright and Baylor are sued in their individual and official capacities.

IV. FACTUAL ALLEGATIONS

6. Defendants have intentionally, and with malice or reckless indifference, and deliberate disregard, discriminated and retaliated against plaintiff on the basis of plaintiff's disability and/or gender, with respect to promotions, compensation, job assignments, and other terms, conditions and privileges of employment. Defendant also willfully failed to provide plaintiff with her rights under the FMLA and retaliated against her due to, *inter alia*, her need for such leave, and her assertion of her rights under federal law.

7. Plaintiff was diagnosed with major depression when she was sixteen years old. She takes medication for the condition and, for all time relevant, attended regular counseling. However, plaintiff is able to perform all essential functions of her previous position as Corporal, with, or without, accommodations. Thus, plaintiff is a qualified individual with a disability, as that term is defined by the ADA.

8. On February 15, 2002, plaintiff was hired as a police officer by

defendants.

9. After finishing her training, plaintiff became a senior officer and was assigned her own route. Based on her performance, plaintiff was recommended for regular merit raises.

10. In February 2005, plaintiff was promoted to the position of Corporal.

11. In December of 2005, plaintiff was hospitalized for a week following an overdose of nonprescription sleeping pills. Plaintiff sought, and was entitled to, and received, a short leave of absence under the FMLA.

12. In January 2006, plaintiff's doctor released plaintiff to return to work in her former position. However, defendants did not allow plaintiff to work in her previous position. Instead, defendant disciplined plaintiff and placed her on a 'light duty' desk job. Defendants based such discipline on Rules and Regulations of the Montgomery Police Department. Such rules are unduly subjective and they discriminate against persons with disabilities. Defendants began an investigation into plaintiff's fitness for duty.

13. During this investigation, defendants requested that plaintiff be evaluated by a doctor of defendants' choosing. Plaintiff agreed to this exam and was cleared for duty by the physician.

14. Plaintiff performed her the duties at the light duty desk position well and without incident.

15. Plaintiff continued to seek reinstatement to her previous, or an equivalent, position.

16. Defendant continued to refuse to allow plaintiff to return to her former, or an equivalent, position.

17. On May 9, 2006, defendants terminated plaintiff.

18. Upon information and belief, similarly situated and/or those male police officers who have mental illness and/or depression have not been terminated.

19. As a result of defendants' actions, plaintiff has suffered extreme harm, including, but not limited to, loss of employment, denial of wages, compensation, and other benefits and conditions of employment. Additionally, plaintiff has suffered injury, including pain, humiliation, mental anguish and suffering, and loss of enjoyment of life.

V. CAUSES OF ACTION

COUNT I

Titles I and II of The Americans With Disabilities Act, § 504 of the Rehabilitation Act and Retaliation

20. Plaintiff realleges and incorporates by reference paragraphs 1 through 19 above with the same force and effect as if fully set out in specific detail herein below.

21. As stated, plaintiff is qualified individual with a disability pursuant to the ADA. Plaintiff has a condition which substantially limits at least one major life

activities and/or she is perceived a such and/or has a history of a disability. 42 U.S.C. § 12102.

22. Defendants are employers and public entities in accordance with 42 U.S.C. § 12131(1) and 42 U.S.C. § 12111(5). Defendant Montgomery is also a recipient of federal financial assistance under § 504.

23. With, or without, a reasonable accommodation, plaintiff was, and is, able to perform the essential functions of her former position as Corporal. Plaintiff meets the definition of a qualified individual with a disability pursuant to 42 U.S.C. § 12111(8).

24. Defendants have intentionally discriminated against plaintiff and have limited, segregated, and classified plaintiff in a way which adversely affects her opportunities and status because of her disability. 42 U.S.C. §§ 12112 and 12132; 29 U.S.C. 794.

25. Defendants have imposed rules and standards which are not consistent with business necessity. These rules as applied have the effect of discriminating against the plaintiff on the basis of her disability and perpetuate the discrimination of others. 42 U.S.C. § 12112(b)(6).

26. Plaintiff sought a reasonable accommodation, including a short leave of absence. Defendants effectively denied such request when it reassigned and terminated her. Accommodating plaintiff in her former position would not have

caused undue hardship to defendants. 42 U.S.C. §§ 12112 and 12132; 29 U.S.C. 794.

27. Defendants have also coerced, interfered with and retaliated against plaintiff. Plaintiff engaged in statutory protected activity by, *inter alia*, requesting a reasonable accommodation, by complaining to her supervisors about the failure to accommodate her disability and about the imposition of rules that discriminated against her on the basis of her disability. Subsequent, to engaging in this activity, defendants took adverse action, including, but not limited to, assigning the plaintiff to a desk job, terminating the plaintiff, and otherwise discriminating against the plaintiff. 42 U.S.C. § 12203(a) & (b).

28. Defendants, by their actions, have intentionally, maliciously and with reckless indifference discriminated, coerced, interfered with and retaliated against plaintiff because of her perceived disability with regards to termination, employee compensation, benefits, and other terms and conditions of employment. 42 U.S.C. § 12112.

COUNT II

Sex Discrimination in Violation of Title VII, 42 U.S.C. § 1981 and Retaliation.

29. The Plaintiff realleges and incorporates by reference paragraphs 1-28 above with the same force and effect as if fully set out in specific detail herein below.

30. The plaintiff was intentionally, maliciously and wilfully discriminated against and continuously harassed because of her gender , in violation of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991.

31. Defendant has also retaliated against plaintiff. Plaintiff engaged in statutory protected activity by complaining to her supervisors about the disparate treatment. Subsequent, to engaging in this activity, defendant took adverse action, including assigning the plaintiff to a desk job, terminating the plaintiff, and otherwise discriminating against the plaintiff.

COUNT III

The Family Medical Leave Act and Retaliation

32. Plaintiff realleges and incorporates by reference paragraphs 1-31 above with the same force and effect as if fully set out in specific detail herein below.

33. As stated, plaintiff is an eligible employee in that she is person entitled to leave to care for her own serious health condition pursuant to 29 U.S.C. § 2612. The plaintiff has a serious medical condition under 29 C.F.R. § 825.114.

34. Plaintiff was entitled to benefits under the FMLA. She had been employed with defendants for at least twelve months, but was effectively denied FMLA benefits in violation of the 29 CFR § 825.220. Defendants are employers in accordance with 42 U.S.C. § 2611.

35. Defendants violated the Family Medical Leave Act, 29 U.S.C. § 2614, *inter alia*, by failing or refusing to provide leave and by failing or refusing to return plaintiff to her former position. 29 CFR § 825.220.

36. Further, defendants retaliated and/or took adverse action against plaintiff due to her need for leave under the FMLA. 29 CFR § 825.220. Plaintiff opposed defendants' failure to reinstate her to her former position after returning to work. Subsequent to this, defendant terminated the plaintiff.

37. As a result of defendant's actions, plaintiff has suffered extreme harm, including, but not limited to, loss of employment opportunities, denial of wages, compensation and other benefits and conditions of employment. Additionally, plaintiff has suffered injury including pain, humiliation, mental anguish and suffering, and loss of enjoyment of life.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:

1. Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the defendant, including the action taken against plaintiff by defendants, are violative of plaintiff's rights as secured by Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, Title VII of the Act

of Congress known as the "Civil Rights Act of 1964," 42 U.S.C. Section 2000e *et seq*. as amended, including the Civil Rights Act of 1991, 42 U.S.C. §§ 1981 and 1981a, and the FMLA, 29 U.S.C.§ 2611, *et. seq*.

2. Grant plaintiff a promotion, and a permanent injunction enjoining the defendant, its agents, successors, employees, attorneys and those acting in concert with the defendant, and at the defendants' request, from continuing to violate plaintiff's rights as well as those who are similarly situated pursuant to Title II of the Americans with Disabilities Act, Title VII of the Act of Congress known as the "Civil Rights Act of 1964," 42 U.S.C. Section 2000e *et seq*. as amended, including the Civil Rights Act of 1991, 42 U.S.C. §§ 1981 and 1981a, and the FMLA, 29 U.S.C.§ 2611, *et. seq*.

3. Award plaintiff damages including back pay, front pay, nominal, compensatory, punitive and liquidated damages.

4. Award plaintiff reasonable costs, attorney's fees and expenses.

5. Award such other relief and benefits as the cause of justice may require.

Dated: July 26, 2007

Respectfully submitted,

Deborah A. Mattison
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Attorneys for Plaintiff

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PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY.

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Montgomery, AL 36104

Bobby Bright, Mayor
City of Montgomery
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